

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MARK ORTMAYER,)
Plaintiff,)
v.)
UNION BANK OF CALIFORNIA,)
N.A., UNIONBANCAL MORTGAGE)
CO., CAL-WESTERN RECONVEYANCE)
CORPORATION, MERIDIAN REALTY)
GROUP, INC., CHRISTOPHER)
BURKE, TIMOTHY M. PURCELL,) ORDER
MICHAEL G. GUNN, GUNN & CAIN,)
LLP, "A" DOE THROUGH "I" DOE,)
UNIDENTIFIED WIVES OF THE)
ABOVE INDIVIDUAL DEFENDANTS,)
Defendants.)
No. CV-05-423-HU

HUBEL, Magistrate Judge:

Pro se plaintiff brings this action against several defendants with claims arising out of a real estate financing transaction. Presently, defendant Michael Gunn moves to dismiss for improper service and defendants Gunn, individually, and Gunn & Cain, LLP, move to dismiss the claims against them for failure to state a claim.

Having reviewed the motions, I conclude that the motion for

1 failure to state a claim should be treated as a motion for summary
2 judgment because the moving defendants submit materials outside the
3 pleadings for consideration. With this Order, I notify plaintiff
4 of the conversion of the motion for failure to state a claim under
5 Federal Rule of Civil Procedure 12(b) (6) into a motion for summary
6 judgment under Federal Rule of Civil Procedure 56.

7 I further advise plaintiff as follows:

8 Defendants Gunn, individually, and Gunn & Cain, LLP have moved
9 to dismiss the claims against them. This motion will be treated as
10 a motion for summary judgment by which they seek to have your case
11 against them dismissed. A motion for summary judgment under Rule
12 56 of the Federal Rules of Civil Procedure will, if granted, end
13 your case against these defendants.

14 Rule 56 tells you what you must do in order to oppose a motion
15 for summary judgment. Generally, summary judgment must be granted,
16 and your case will end, when there is no genuine issue of material
17 and the party who asked for summary judgment is entitled to
18 judgment as a matter of law. "No genuine issue of material fact"
19 means there is no real dispute about any fact that would affect the
20 result of your case. When a party you are suing makes a motion for
21 summary judgment that is properly supported by affidavits or
22 declarations, you cannot simply rely on what your complaint says.
23 Instead, you must set out specific facts in affidavits or
24 declarations, depositions, answers to interrogatories, or
25 authenticated documents, as provided in Rule 56(e), that contradict
26 the facts shown in the defendant's declarations and documents and
27 show there is a genuine issue of material fact for trial. If you
28 do not submit your own evidence in opposition, summary judgment, if

1 appropriate, may be entered against you. If summary judgment is
2 granted, your case will be dismissed and there will be no trial
3 against these defendants.

4 Plaintiff is given until Friday, June 3, 2005, at 4:30 p.m.,
5 in which to file a response or any evidence in opposition to Gunn's
6 and Gunn & Cain, LLP's motion. If plaintiff files any materials
7 before or on that date, the moving defendants shall have two weeks
8 from when plaintiff's materials are filed, to submit a reply. The
9 motion will be taken under advisement on that date.

10 IT IS SO ORDERED.

11 Dated this 18th day of May, 2005.

14 /s/ Dennis James Hubel
15 Dennis James Hubel
16 United States Magistrate Judge